

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

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THE HONOURABLE MR. JUSTICE A.K.BASHEER

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THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 24TH OCTOBER 2007 / 2ND KARTHIKA 1929

WP(C).No. 13921 of 2006(G)

PETITIONERS:

- 1. SATHYDEVAN, AGED 43 YEARS,
S/O.K.G.NARAYANAN, PAID SECRETARY, PANGODE
KSHEEROLPADAKA CO-OPERATIVE SOCIETY LTD.,
SANTHA MANDIRAM, THAZHAM, KARIMPINPUZHA P.O.
KOLLAM.**
- 2. M.SUDHARMA, AGED 47 YERS,
W/O.SADANANTHAN, ASSISTANT CLERK,
PANGODU KSHEEROLPADAKA CO-OPERATIVE SOCIETY LTD.,
SATHEESA BHAVANAM, THAZHAM, KARIMPIMPUPUZA P.O.
KOLLAM,.**
- 3. SUSEELA.M. AGED 41 YERS,
W/O.GOPALAKRISHNAN, PAID SECRETARY,
PAVITHRESWARAM PANCHAYATH VANITHA CO-OPERATIVE
SOCIETY, PUTHOOR, PANGODE, KINARULLA KIZHAKKATHIL,
VENG P.O. SASTHAMCOTTAH, KOLLAM.**

BY ADV. SRI.B.HARISH KUMAR

RESPONDENTS:

- 1. THE KERALA PUBLIC SERVICE COMMISSION,
REPRESENTED BY ITS SECRETARY, PATTOM P.O.
THIRUVANANTHAPURAM.**

W.P.(C) NO.13921/2006

**2. THE DISTRICT OFFICER,
KERALA PUBLIC SERVICE COMMISSION, DISTRICT OFFICE,
CORPORATION BUILDING, ANDAMUKKAM, KOLLAM.**

**3. THE REGISTRAR,
OFFICE OF THE REGISTRAR OF CO-OPERATIVE SOCIETIES,
THIRUVANANTHAPURAM.**

**BY ADV. SRI.P.C.SASIDHARAN, SC, KPSC
GOVERNMENT PLEADER**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 24/10/2007,ALONG WITH WPC NO. 22211 OF 2006 AND
CONNECTED THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

WPC.NO.13921/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE CERTIFICATE DT. 16.5.06 ISSUED TO THE 1ST PETITIONER BY THE PRESIDENT OF PANGODU KHEEROLPADAKA CO-OP. SOCIETY.

EXT.P2:- COPY OF THE CERTIFICATE DT. 16.5.06 ISSUED TO THE 2ND PETITIONER BY THE SECRETARY OF PANGODE KHEEROLPADAKA CO-OP. SOCIETY.

EXT.P3:- COPY OF THE CERTIFICATE DT. 16.5.06 ISSUED TO THE 3RD PETITIONER BY THE PRESIDENT, PAVITHRESWARAM PANCHAYATH VANITHA CO-OP. SOCIETY.

EXT.P4:- COPY OF THE PAPER NOTIFICATION DT. 13.5.06 PUBLISHED IN MATHRUBHUMI THOZHIL VARTHA FOR THE POST OF CLERK/CASHIER (CATEGORY NO. 21/06) IN DISTRICT CO-OP. BANKS.

EXT.P5:- COPY OF THE COMPLAINT SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT ON 14.5.06.

EXT.P6:- COPY OF THE PROCEEDING DT. 4.8.06 ISSUED BY THE 1ST RESPONDENT.

EXT.P7:- COPY OF THE RELEVANT PAGES OF THE G.O.(MS) 79/86 CO-OP. DT. 30.9.86 ISSUED BY THE GOVERNMENT.

EXT.P8:- COPY OF THE G.O.(MS) NO.9/88 CO-OP. DT. 23.3.88 ISSUED BY THE GOVERNMENT.

/TRUE COPY/

P.A. TO JUDGE

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J.B.KOSHY, A.K.BASHEER & K.P.BALACHANDRAN, JJ.

W.P.(C)Nos.13921, 20776, 22072,
22211 & 23157 of 2006

Dated 24th October, 2007

JUDGMENT

Koshy,J.

Doubting the correctness of the decision in **Public Service Commission** v. **Ramesan** (2005 (4) KLT 466) these cases were referred to the Full Bench. The petitioners in these writ petitions are employees in the Primary Co-operative Societies affiliated to the District Co-operative Societies. We are referring to the exhibits produced in W.P. (C)No.20776/2006 for convenient sake unless otherwise specifically mentioned. By inserting Section 3A to Section 80 of the Kerala Co-operative Societies Act (in short 'KCS Act') by Act 6 of 1995, the selection of candidates for all 14 District Co-operative Banks in the State were brought under the Public Service Commission (PSC). Under Rule 187, when vacancies are in Apex Society or Central Society, 50% of the vacancies shall be reserved to the employees of Primary Co-operative Societies affiliated to Apex or Central Society. Rule 187 reads as follows:

“187. Vacancies in Apex Society or Central Societies.- Notwithstanding anything contained in rule 186, in appointments to apex societies or central; societies, 50% of the vacancies shall be reserved to the employees of the member

societies, of the respective apex society or central society as the case may be, having a minimum regular service of 3 years in any of the cadre and having the required qualification for the notified posts in the apex society or central society.”

Petitioners who are employees of Primary Co-operative Societies applied for the post of Clerk/Cashier in various District Co-operative Banks in the State in pursuance of Ext.P1 notification dated 25.4.06 in the in-service quota. The qualification prescribed as per Exhibit P1 notification is Graduation with Diploma in Co-operation. It is the contention of the petitioners that the above prescription of qualification in the notification is contrary to the Rules. The provisions in Chapter XV of Kerala Co-operative Societies Rules (hereinafter referred to as 'KCS Rules') regarding Establishment, Classification of jobs, Recruitment, Promotion, etc. were added to the Rules by S.R.O. No.506/73, effective from 1st January, 1974. The KCS Rules are made by virtue of powers given under Section 109 of the KCS Act. Section 109 reads as follows:

“109. Power to make rules:- (1) The Government may, for the whole or any part of the State and for any class of societies, after previous publication, by notification in the Gazette, make rules (‘either prospectively or retrospectively by) to carry out the purpose of this Act.”

Rule 186 and Appendix III provide Classification of Employees, Designation and their Scale of Pay. The basic pay of Junior Assistants starts from Rs.210/-, Cashier starts from Rs.210/-, Clerk Grade I starts from Rs.160/-, Steno Typist starts from Rs.160/- and Clerk Grade II starts from Rs.150/-. As per Rule 186(1) of the Rules, qualification for appointment to all posts other than those requiring technical qualifications, the starting pay of which is Rs.250/- and above, is Degree in Commerce or Masters degree in Arts of a recognised University with Co-operation, whereas in Rule 186 (ii), qualification for appointment to all posts to be filled up by direct recruitment for all Supervisory and Ministerial Officers other than those requiring technical qualifications, the starting pay of which is below Rs.250/-, is SSLC with Junior Diploma in Co-operation. The above Rule was not amended, even though there were subsequent pay revisions and the basic pay also was increased several times. Now, even the basic pay of the lowest paid employee is above Rs.2,500/- and no employee is drawing less than Rs.250/- per month. It is the contention of the petitioners that for appointment in the in-service quota, the only qualification required is S.S.L.C. with J.D.C. with three years' experience for the posts published in Ext.P1 notification as all those posts carry less than Rs.250/= in the prescribed ratio when Rule 186 was framed.

2. By Exhibit P2 dated 15.6.1982, the Registrar clarified as follows:

“The Scales of pay of various categories of posts in Appendix III to KCS rules 1969 have been revised as per different executive orders of Government in respect of certain categories of Co-op. Institutions such as Kerala State Co-op. Bank, Kerala Co-op. Central and Mortgage Bank, Central Co-op. Banks, Primary Land Mortgage Banks and Primary Agricultural Credit Societies etc. The different Govt. orders as per which the scale of pay have been thus revised have no effect of amending the relevant rules (appendix III to KCS Rules). Steps are being taken to get the rules suitably amended.

It is therefore clarified that, pending amendment of the Rules, the qualification under Rule 186 of KCS Rules for different categories of posts, have to be decided based on the pre-revision scales of pay, which is prescribed in appendix III to the KCS Rules 1969.” (Underlining for emphasis)

Appendix III and Rule 186 of the Rules were not altered, so as to incorporate the present pay, even though the present basic pay is more than ten times of the basic pay fixed under the Rules. Since there was no amendment to Appendix III, without Exhibit P2, the above Rule is unworkable. Therefore, the petitioners' contention is that, on the basis of the Rules, the prescribed qualification for direct recruitment is only SSLC and JDC and three years' experience for the

in-service quota and not degree with Diploma in Co-operation. Ext.P2 is not amended or altered.

3. By Exhibit P5, a Regulation was passed by the Government stating that Government is pleased to approve the revised service regulations of the employees of the District/Central Co-operative Banks in the state, appended to this order for adoption by the respective Banks, so that there is some uniformity in the matter of adopting Regulations by the Banks. There were contentions regarding the validity of the Regulations, as according to the petitioners, it cannot be taken as an amendment to Rule 186 of the Rules, as the Rule has to be amended by Rule Making Authority, as per the prescribed procedure. Assuming that Exhibit P5 is valid and direct recruitment for the post of Clerk/Cashier requires Degree with Diploma in Co-operation, Exhibit P5 was later amended by the Government by Exhibit P6 (G.O.(MS)No.9/88/Coop. dated 23.3.1988). This reads as follows:

“Government are pleased to order that clause (1) of the Service Regulations approved in the G.O. read above will be substituted with the following:

8(i) Clerks/Cashiers:

(a) for direct recruitment the qualification for the post of clerks/cashiers will be B.A., B.Sc.

or B.Com. with H.D.C./J.D.C. or B.Com. with Cooperation or B.Sc. (Cooperation Banking) of Kerala Agricultural University.

(b) In the case of the posts reserved for employees of the affiliated primary cooperative societies the qualification will be SSLC with JDC and three years experience in the affiliated primary cooperative society.

(c) The sub-staff of the bank will be eligible for promotion as clerk if they possess SSLC with JDC and minimum three years experience.”

Even if Exhibit P5 is valid, read with Exhibit P6, for direct appointment from the quota reserved for employees of the primary co-operative societies for the post of Clerk/Cashier, the required qualification is only SSLC with JDC and minimum three years experience. The three years' experience in affiliated Primary Co-operative Societies was considered as an important matter by Government while Ext.P6 was issued. It is pertinent to note that for promotion degree is not required.

4. The Public Service Commission has relied on Ext.P5 and the Recruitment Rules approved by various apex societies, on the basis of the direction from the Registrar. One set of Rules signed by the General Manager of the Ernakulam District Co-operative Bank were shown to us during hearing. Extracts of the above rules are also mentioned in the counter affidavit filed by the PSC. It is submitted by

the counsel for the PSC that for having uniformity, the above Rules were framed on the basis of the letter by the Registrar, as stated in paragraph 6 of the counter affidavit. It is not even stated whether rules were framed on the basis of Ext.P5 regulation. In the above Rules, with regard to promotion, the qualification prescribed for Clerk/Cashier from lower post is only SSLC with JDC and minimum three years experience. But, for direct recruitment, the qualification prescribed is B.A./ B.Sc./B.Com. with HDC or JDC or B.Com. with Co-operation or B.Sc. (Co-operation and Banking) of Kerala Agricultural University and according to the PSC, for direct recruitment from the ratio allotted to primary societies also, same qualifications are necessary, notwithstanding the Statutory Rule 186 and Exhibit P5 Regulation, as altered by Exhibit P6. It is the contention of the petitioners that Ext.P1 notification is based on Ext.P5 regulation and neither the Registrar nor the General Manager of the Bank can amend the rules framed by the rule making authority as per the Statute and, therefore, the rules relied on by the Public Service Commission cannot be taken into account for fixing the qualification for direct recruitment from the affiliated Societies. It is also stated that even though as directed by the Registrar, some of the Apex Societies adopted recruitment rules, Societies are governed by statutory rules. Rule 5 of the KCS Rules stated that even bye-laws of the societies shall not be against the Act and Rules.

5. In **Ramesan's** case (supra), the question of validity of Ext.P5 Regulation was not considered. Ext.P6 amendment issued by the Government was also not produced or considered. Whether Registrar or General Manager of the Societies has power to amend Rule 186 of the statutory rules was also not considered in the above case. Even if Ext.P5 regulation is valid as contended by respondents, in view of Ext.P6 which was issued subsequently by the Government, the sub-staff of the Primary Co-operative Banks will be eligible for the promotion if they possess S.S.L.C. with Junior Diploma in Co-operation (JDC) and minimum three years experience in the affiliated primary Co-operative Society. Of course, they have to pass the test by the PSC. There is no dispute for the proposition that the qualification to be considered is the qualification prescribed for the test on the date of notification calling for applications. In **Valsala Devi v. Leela Bhai** (2002 (3) KLT SN 26) (W.A.No.1716 of 1996), a Division Bench of this court held that the qualification at the time of recruitment has to be considered. But, the whole question is what is the qualification required at the time of Ext.P1 notification. We have already seen that Rule 186 fixes the qualification. The rule can be amended only by making any rule under Rule 186, but, no rule was made to amend Rule 186.

6. It is submitted by the learned counsel for the Public Service Commission that Ext.P5 regulation is a rule made under Section 80 of the Co-operative Societies Act and, therefore, it need not be published and thus by Ext.P5 a valid rule has been made. Ext.P5 Government Order framed regulation which is as follows:

“In supersession of the orders issued in the Government orders read above, government are pleased to approve the revised service Regulations of the employees of the District/Central co-operative Banks in the State, appended to this order for adoption by the respective Banks, Government have approved the regulation so that there is some uniformity in the matter of adopting regulations by banks.”

Now we will come to Section 80 of the Co-operative Societies Act. It reads as follows:

“80. Officers etc. of Co-operative Societies:-

- | | | | |
|-----|----|----|----|
| (1) | xx | xx | xx |
| (2) | xx | xx | xx |

(3) The Government shall, in consultation with the State Co-operative Union, make rules (either prospectively or retrospectively) regulating the qualification, remuneration, allowances and other conditions of service of the officers and servants of the different classes of societies specified in sub-sec(1).”

It authorizes Government, in consultation with the State Co-operative Union, to make rules regulating the qualification, either prospectively or retrospectively, and other conditions etc., but, such rules can be framed only in consultation with the State Co-operative Union. It is not stated in Ext.P5 that such a consultation was done. Admittedly, no such consultation was done. Apart from the above, power to make rule under Section 80 is only with the Government and not with the Registrar or General Manager of Societies. Rules made under Section 80 are subservient to those provided for in Rule 186 as held in Ali v. State of Kerala (2006(1) KLT 205). At paragraph 6 of the above decision it is observed as follows:

“6. Rules 185 and 186 occurring in Chapter XV of the KCS Rules, 1969 relate to establishment and S.80 of the KCS Act occurring in Chapter XII of the Act relates to establishment. S.109 confers on the Government power to make rules. Sub-s.2 provides specific power to frame rules regarding the qualifications of employees of societies. R.186 is referable to the said rule making power, which is statutory and such rule is among those which are required to be made in the manner prescribed in sub-s.1 of S.109 followed by a rule of laying as provided in sub-s.3 of S.109. Rr.185 and 186 are therefore part of subordinate legislation while the existence of the rules provided for under S.80(2) and (3) are essentially subservient to those provided for in Rr.184 and 186. There can be no room for any provision being made invoking sub-s.2 or 3 of S.80 in any manner contradicting the contents of Rr.185 and 186 of the Rules.”

But, since Ext.P5 is with regard to service regulation, even if it is accepted as rule made under Section 80, it was altered by Ext.P6 issued by the Government. According to respondents, Registrar prepared model rules and sent to the respective Co-operative Societies and they framed rules and as per the rules, even for direct recruitment for the 50% vacancies earmarked for the employees of the primary societies, degree is necessary. Therefore, it is contended that this is a rule published under Section 80, but, Section 80 authorises only Government to make rules. Admittedly, the rules made by the Bank or model regulations sent by the Registrar are not rules under Section 80 and, therefore, the original Rule 186 read with Ext.P2 or Ext.P5 regulation amended by Ext.P6 Government Order will not govern the field. Learned counsel for the P.S.C. Submitted that Ext.P2 only says that unless amendment of Annexure III to KCS Rules, old scales of pay will be applicable. But, Rule 186 was not amended. Even if Ext.P5 is a rule made under Section 80 issued by the Government, it is amended by Ext.P6 Government order. So long as Ext.P6 is valid, Registrar cannot frame model rules or Co-operative Societies cannot make rules on advice of the Registrar which are inconsistent with statutory rules. Registrar or District Co-operative Societies cannot pass rules against the provisions of the Act and Rules or rules under Section 80 can be framed only by Government. It is well settled law that a delegated power can be conferred by the

delegate upon another. Applicable maxim is “Delegata potestas non potest delegari” means a delegated power cannot be delegated. The maxim in short is as follows; “Delegatus non potest delegare”. This principle was considered by the Supreme Court in **Ganpati Singhji v. State of Ajmer** (AIR 1955 SC 188). In that case, regulation empowered the Chief Commissioner to make rules. Chief Commissioner made rules. Apex Court held that action of the Commissioner in delegating the authority to the District Magistrate is ultra vires. But, if sub-delegation is authorised by the Act, the matter is different as in that case there is specific authorisation as held by the Apex Court in **Pradyat Kumar v. Chief Justice of Calcutta** (AIR 1956 SC 285 at p.291). It is stated by de SMITH in 'Judicial Review of Administrative Action' that even a discretionary administrative power entrusted by a statute to a particular authority cannot be further delegated except as provided in the statute (See 4th Edition Page 303). In this connection, we also refer to the decision of the Apex Court in **Sahni Silk Mills (P) Ltd. v. E.S.I Corporation** ((1994) 5 SCC 346 at p.350& 351). Therefore, model rule suggested by the Registrar and allegedly adopted by societies is not a valid rule made under Section 80 which can be framed only by Government. If Rule 186 is applicable, as already stated, there is no employee with the basic pay of Rs.250/= and only by Ext.P2 it is made workable. If Ext.P5 is a valid rule made by Government, as contended by the respondents, it is

amended by the Government by Ext.P6.

7. As held by this court in **Abdul Rasheed** v. **Kerala Public Service Commission** (2002 (3) KLT 405) & **Public Service Commission** v. **Abdul Rasheed** (2007 (3) KLT 881) P.S.C. has no power to go beyond qualification prescribed by the rule. Hence, considering Rule 186, Appendix III to KCS Rules, Ext.P2 and Ext.P5 regulation as amended by Ext.P6, we are of the opinion that petitioners who had qualification of S.S.L.C. with JDC and three years continuous experience are entitled to write the test under the 50% quota reserved for in-service candidates if they are otherwise eligible and rejection of their candidature for lack of qualification cannot be sustained. In **Ramesan's** case (supra) Ext.P5 regulation was relied on as a rule made under Section 80(3), but, it was not pointed out that Ext.P5 was amended by Ext.P6. Since Ext.P5 was amended by Ext.P6, **Ramesan's** case is more applicable. Ext.P6 is still valid. We also note that by interim order of this court dated 3/10/2007 we have allowed the petitioners to participate in the test provisionally if test is conducted subject to the result of the writ petitions. It is submitted that the test is yet to be conducted. So, petitioners herein also shall be allowed to write the test, if they are not otherwise ineligible. Ext.P1 notification was published in the gazette dated 25.4.2006. More than one and a half years have passed. We make it clear that

those who have not approached this court will not get the benefit as they are guilty of laches.

All writ petitions are disposed of accordingly.

J.B.KOSHY
JUDGE

A.K.BASHEER
JUDGE

K.P.BALACHANDRAN
JUDGE

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